No. 8, Original

Supreme Court, U.S.
FILED
NOV 19 1982
Alexander L. Stevas, Clerk

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

STATE OF ARIZONA, *Plaintiff*,

v.

STATE OF CALIFORNIA, ET AL., *Defendant*.

MOTION FOR RECONSIDERATION

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State of Arizona,
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vs.

State of California, et al.,
Defendants.

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When this Honorable Court ordered oral argument in the case at bar for Dec. 8, 1982 it stated inter alia that the number of speakers allowed would be no more than two for each side. In response, the Quechan Tribe promptly filed a

Motion to Modify said Order to provide for "three" speakers, and this was denied on Nov. 12, 1982. The Quechan Tribe now moves for reconsideration of its Motion to Modify on the ground that this Court's denial of its said Motion has the practical effect of denying it the privilege of presenting oral argument while at the same time allowing its adversaries to enjoy this privilege. This result cannot be characterized as being anything less than unwarranted and unfair discrimination by this Court.

Fairness Mandates Modification

The Quechan Tribe understands that oral argument on their behalf is not a right but a privilege. The Court could have refused to entertain any oral argument, but this is not the situation in the case at bar where the State Parties, the Department of Justice and the Indian tribes who have acted in concert with them will be allowed oral argument by lawyers they have

selected while the Quechans are compelled to have their lawyer remain silent.

The inviolate right to select one's own lawyer is a well-recognized cornerstone of American justice. Moreover, the sacrosanct quality of this right does not even change where counsel is provided without charge by the Department of Justice to needy Indians. In fact, this legal truth was noted when the Quechan Indians first petitioned this Honorable Court to intervene in the case at bar, with independent counsel of their own choosing. The Quechans contended that they had previously been inadequately represented by the Department of Justice which had such an inherent conflict of interest that it had been precluded from making a full and complete presentation of their case in the earlier hearings. Then, in its subsequent orders, this Court recognized the independent lawyer selected by the Quechans and allowed him to present their case. Of importance is the fact that their case significantly differed from the other

cases presented by the other Indian tribes of record. This was apparent throughout the hearings when the Quechan Indians were forced to proceed alone against determined opposition from the Department of Justice which abstained from helping and deliberately opposed their claims.

Today, the Quechans are still standing alone. They are not affluent, but have nevertheless willingly sacrificed to present the best case they could afford in the hearings before Special Master Tuttle. While they didn't receive recommendations to approve all of their claims to the invaluable water of the Colorado River, they did receive considerably more than that claimed on their behalf by the Department of Justice. Furthermore, when they sincerely attempted to prove the conflict of interest bias they found that they had to do battle with both the Department of Justice and the other tribes, who for expedience had joined hands with the Department of Justice. In fact, on this point, the Quechans cannot ignore the

fact that the lawyer selected to be the speaker for the other four tribes, a former Department of Interior lawyer, definately opposed the Quechan case during the recent hearings before Special Master Tuttle. (TR VIII, 1512, 1524, 1536, 1537, 1538, 1549 and 1580) Hence, how could either he or the speaker for the government, who have both opposed the Quechan effort to prove the malignant conflict of interest issue, aggressively advocate in oral argument the Quechan claims?

Conclusion

The Quechans certainly do not intend anything derogatory regarding the speakers, but they firmly believe that they should also be allowed argument by the lawyer chosen by them if the presentation of their case is to be complete. To be denied oral argument three years and thousands of hard-to-get dollars later would amount to little more than a charade performed in the name of justice. The Quechan Indians have justifiably

relied upon this Court's orders allowing them their own lawyer and have therefore obligated themselves to pay whatever they could for his services. It would now be a travesty of justice to deny them the right to have him present final oral argument on their behalf while at the same time allowing their adversaries to be represented by counsel of their choice. It is therefore respectfully requested that this Honorable Court reconsider its order denying the Quechan's Motion to Modify to avert the discrimination which will otherwise inevitably result.

Respectfully submitted,

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November 17, 1982

Certificate of Counsel

As counsel for the Quechan Tribe, I hereby certify that this Motion for Reconsideration is

presented in good faith and not for delay.

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